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In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 437

UNITED STATES OF AMERICA, PETITIONER

v.

C. T. JAFFRAY, R. H. M. ROBINSON, AND S. M. ARCHER, AS TRUSTEES OF THE ESTATE OF MINNESOTA AND ONTARIO PAPER COMPANY, A CORPORATION, DEBTOR

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit, entered in the above cause on June 29, 1938 (rehearing denied July 25, 1938).

OPINIONS BELOW

The opinion of the District Court (R. 103) is not reported. The opinion of the Circuit Court of Appeals (R. 347) is reported in 97 F. (2d) 488.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 29, 1938 (R. 355). A petition for rehearing was denied July 25, 1938 (R. 358). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Where a taxpayer has overpaid taxes for several years, which are allowed as overpayments by the Commissioner of Internal Revenue and then credited by him against taxes for other years, the amount thereof being in excess of $10,000, whether the District Court may entertain a suit for refund for the years of original overpayment.

2. Whether it is a jurisdictional prerequisite that a claim for refund shall have been filed setting forth as a ground of recovery the alleged erroneous assessments or untimely collections for the years to which the overpayments were credited.

STATUTES INVOLVED

The pertinent statutes are set forth in the Appendix, *infra*, pp. 15-21.

STATEMENT

This action was instituted in the District Court of the United States for the District of Minnesota by the trustees of the estate of Minnesota and Ontario Paper Company, a corporation, hereinafter referred to as the taxpayer, against the

United States to recover internal revenue taxes in the amount of $118,727.61, with interest (R. 1, 14).

Among other things, the petition alleges the filing of income tax returns for the years 1922, 1923, 1924, and 1925, the payment of taxes for those years to the Collector of Internal Revenue then in office, who was out of office at the date the present action was instituted, and the filing of claims for refund of certain of the taxes for each of those years (R. 1, 2–4). The petition alleges that the claims for refund were disallowed to the extent indicated in certain certificates of overassessment (R. 4), but it further alleges that by these certificates of overassessment the Commissioner of Internal Revenue determined overpayments for each of the years 1922 to 1925, inclusive, covering the amounts here in suit, which he credited against taxes claimed by him to be owing for the years 1921, 1926, 1927, 1928, 1930, and 1931 (R. 5–6). Attached to the petition, and by reference made a part thereof, was an agreement under Section 606 of the Revenue Act of 1928, finally agreeing, among other things, to the principal tax liability for the years 1922 to 1925, inclusive (R. 6, 23–25). The petition alleges that the credits applied against the years 1921, 1926, 1927, and 1928 were erroneous and unlawful for reasons set forth at length in the petition relating to the correct tax liability for the years 1926, 1927, and 1928 (R. 6–12) and the collectibility of the tax for 1921 when the credits were made (R. 12–14). There was no allegation that claims for

refund had been filed for the years 1921, 1926, 1927, and 1928 for the amounts which were alleged by the taxpayer to have been collected and satisfied for those years by credit of the overpayments from the years 1922 to 1925, inclusive.[1]

A demurrer filed by the United States (R. 52) was overruled (R. 68–70), and a motion to dismiss filed by the United States (R. 130) was denied and exception noted (R. 132). At the conclusion of the evidence the motion of the United States for judgment was denied and exception noted (R. 265).

The District Court made findings of fact (R. 77–97) and conclusions of law (R. 97–103). It construed the proceeding as brought for the recovery of overpayments of taxes for each of the years 1922 to 1925, inclusive, and 1928,[2] and held that the Court had jurisdiction thereof (R. 97, 103–110). On the merits it held substantially for the taxpayer (R. 98–103, 110–127). On appeal it was held that suit was maintainable to recover the overpayments for the years 1922 to 1925, inclusive. The judgment of the District Court on the merits was modified and affirmed.

---

[1] It was alleged that a claim for refund for $7,758.58 paid in cash to the Collector was filed for the year 1928, prior to the date the credit was made, but the computations of the District Court (R. 126) show that this amount was properly owing from the taxpayer for 1928, and the taxpayer conceded this in the court below.

[2] See footnote (1) *supra*.

SPECIFICATION OF ERRORS TO BE URGED

1. The court below erred in holding that this suit was maintainable as one to recover the overpayments which were admittedly made to the Collector by the taxpayer for the years 1922 to 1925, inclusive.

2. The court below erred in not directing dismissal of the cause for lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

1. This case presents an important question of Federal law which has not been but should be settled by this Court.

By a definitive agreement under Section 606 of the Revenue Act of 1928 the Commissioner of Internal Revenue agreed with the taxpayer as to its liability for taxes for the years 1922 to 1925, inclusive. Thereafter the Commissioner issued certificates of overassessment for those years determining overpayments for each year, which overpayments were credited by the Commissioner against outstanding assessments of taxes for the years 1921, 1926, 1927, 1928, 1930, and 1931.* The present suit was brought to recover the overpayments for the years 1922 to 1925.

Concededly, the taxpayer could not have brought a suit in the District Court for the years 1921, 1926,

*The taxes for 1921 in the amount of $30,810.46 were satisfied entirely from interest on the overpayment for the years 1922 to 1925.

1927, and 1928,[4] because, first, it had filed no claims for refund for those years, and second, the collection, if any, for those years, which exceeded $10,000, was made by the Commissioner by the credit from the overpayments for 1922 to 1925 and hence no suit would lie in the District Court against either the Collector or the United States. *Lowe Bros. Co.* v. *United States*, 304 U. S. 302.

It is evident, however, from a reading of the taxpayer's complaint that although the action purports to be for the years 1922 to 1925, the only questions raised by it relate to the correctness of the assessments and collections for the years 1921, 1926, 1927, and 1928.[5] There was no controversy over taxes for 1922 to 1925, inclusive.[6] It had theretofore been agreed between the taxpayer and the Commissioner of Internal Revenue that the taxpayer had overpaid its taxes for those years and the Commissioner, as required by law, had credited these overpayments against outstanding assess-

[4] The taxpayer admitted that the taxes assessed for 1930 and 1931 were proper, and therefore did not attack the credits made to those years.

[5] In this petition for certiorari, the Government does not dispute the holding of the court below that the deficiencies for 1926, 1927, and 1928 were in part erroneous, although it believes that this holding was incorrect. Also, the Government concedes that the deficiency for 1921 was barred from collection at the time of the credit.

[6] This is emphasized by the fact that the taxpayer had prior to the institution of the present suit dismissed *with prejudice* an earlier suit for refund of 1922 taxes (R. 265, 266).

ments for other years, including the years 1921 and 1926, 1927, and 1928. The question, then, is whether in such circumstances, by purporting to state a cause of action based upon the original wrongful collection by a Collector and an alleged failure of the Commissioner to refund, a taxpayer may litigate, over the objection of the Government, the merits of tax assessments and collections for other years without complying with those provisions of law, the adherence to which would be indispensable to a suit for such other years.

This question has two aspects:

(a) Whether a proper cause of action against the United States in the District Court for more than $10,000 may be grounded upon an original erroneous collection of taxes by a collector where the Commissioner has determined the overpayment and has applied it against taxes assessed against the taxpayer for other years, and (b) whether in any event, it is a jurisdictional prerequisite in such circumstances that a timely claim for refund be filed presenting the facts forming the ground of recovery, namely, facts showing erroneous assessments or improper collections for the years to which the overpayments were credited.

(a) It is, of course, well settled that each taxable year is treated as a unit. *Burnet* v. *Sanford & Brooks Co.*, 282 U. S. 359; *Burnet* v. *Thompson Oil & G. Co.*, 283 U. S. 301, 306. The assessment of taxes for each year has the force of a judgment.

After assessment, taxes are "then due" from the taxpayer regardless of the correctness of the assessment. See *Bull* v. *United States*, 295 U. S. 247, 259–260.

If an assessment of taxes is not paid after demand, administrative officials may seize the debtor's property to satisfy the debt. However, where the determinations by the Commissioner of an overpayment for one year and an unpaid assessment for another year exist contemporaneously, a taxpayer cannot insist that the overpayment be refunded to it in cash and the unpaid assessment collected separately, by distraint or some other proceeding. The Revenue Acts have uniformly provided that where there has been an overpayment of tax the amount of such overpayment "shall be credited" against other taxes then due from the taxpayer and any balance refunded.[7] The courts have construed this provision as giving the Commissioner the absolute right to make a credit, at least where there is no question about the collection of the deficiency being barred.[8] The right to sue the United States being statutory, as is also the right to sue a Collector (see *Moore Ice Cream Co.* v.

[7] Sec. 252, Revenue Acts of 1918 and 1921; Sec. 281 (a) Revenue Act of 1924; Sec. 284 (a) Revenue Act of 1926; Sec. 322 (a) Revenue Acts of 1928 and 1932.

[8] *York Safe & Lock Co.* v. *United States*, 40 F. (2d) 148 (C. Cls.); *Standard Oil Co.* v. *United States*, 5 F. Supp. 976 (C. Cls.); *United States ex rel. Cole* v. *Helvering*, 73 F. (2d) 852 (App. D. C.); *Tull & Gibbs* v. *United States*, 48 F. (2d) 148 (C. C. A. 9th).

Rose, 289 U. S. 373), a cause of action cannot exist where there has been exact compliance with statutes by Government officials. Here, certainly as to the deficiencies for 1926, 1927, and 1928, there can be no question but that the Commissioner adhered strictly to his statutory duty. True, the taxpayer had overpaid its taxes for each of the years 1922 to 1925, inclusive, but the Commissioner had agreed as to that and had disposed of the money as the statutes required him to dispose of it.

This does not mean, of course, that the taxpayer was left without a remedy. As alleged by it below, the crediting of the overpayments for 1922 to 1925 against the assessments for 1921, 1926, 1927, and 1928 constituted a collection and satisfaction of the taxes for the latter years. If proper claims for refund had been filed for these latter years, suit, at least as to the years 1926, 1927, and 1928, could unquestionably have been brought thereon in the Court of Claims. *United States* v. *Swift & Co.*, 282 U. S. 468. In the *Swift* case there was a credit of an overpayment of tax for one year against an erroneous deficiency for another year. This Court sustained a suit brought in the Court of Claims for the year of the deficiency, the principal question being whether a timely claim for refund for the year of the deficiency had been filed. This Court held (p. 476) that the claim for refund "was filed within four years of the payment of the tax, since that payment must be taken to have occurred on

the date of the allowance of the credit by the Commissioner's signature approving the schedule of refunds and credits." It would seem necessarily to follow as a corollary to the *Swift* case that if there was a payment of the tax for the year of the deficiency by virtue of the credit there was a corresponding disposition to and for the use and benefit of the taxpayer of the amount of the overpayment in the year of overpayment, and hence that no suit could be brought for the year of the original overpayment, for the Government would no longer have in its hands money to which the taxpayer would be equitably entitled for that year. Since taxable years are treated as separate and distinct units, it is impossible for a single sum paid by a taxpayer to be an overpayment in that sum for two different taxable years.

(b) Furthermore, the filing of a claim for refund setting forth the grounds which may later be asserted by suit is a jurisdictional requirement. *United States* v. *Felt & Tarrant Co.*, 283 U. S. 269. Here the ground of suit was the alleged wrongful retention of taxes overpaid for 1922 to 1925 because of an asserted erroneous and unlawful application of the overpayments to taxes for other years. The real point in issue was the correctness of the assessments and collection for those other years, not whether the taxes had been overpaid for 1922 to 1925. No claim for refund asserting that the assessments and collections for 1921, 1926, 1927, and 1928 were incorrect was ever filed. The deci-

sion below is therefore in substantial conflict with this Court's decision in *United States* v. *Felt & Tarrant Co., supra.*

2. If, as was held by this Court in the *Swift* case, *supra,* the crediting of an overpayment of tax for one year against an erroneous deficiency for another year constitutes a collection and payment of the tax for the year of the deficiency, and if such a collection or payment, that is, the use of the money paid by the taxpayer for one year to satisfy an obligation of the taxpayer for another year, precludes the taxpayer from maintaining a suit on the original year of overpayment, the further question is presented in the case at bar as to the effect of Sections 607 and 609 of the Revenue Act of 1928, *infra,* p. 19, which provide that any credit against a deficiency barred from collection "shall be void." This question relates only to one of the four years involved here, namely, the year 1921. There exists at present a conflict between the Circuit Court of Appeals for the First Circuit and the Court of Claims on the one hand and the Circuit Courts of Appeals for the Second and Sixth Circuits on the other, as to whether Sections 607 and 609 of the Revenue Act of 1928, *infra,* p. 19, prevent a credit of an overpayment for one year to a barred deficiency for another year from being considered a collection of the tax for the year of the deficiency, and hence corresponding confusion as to the proper year for suit. See *United States* v. *Bertelsen & Petersen E. Co.,* 95 F. (2d) 867 (C. C. A. 1st), in

which application for a writ of certiorari has been filed by the United States, No. 416, present Term. See also *United States* v. *John Gallagher Co.*, 83 F. (2d) 368 (C. C. A. 6th); *United States* v. *Reeves Bros. Co.*, 83 F. (2d) 121, 122 (C. C. A. 6th), certiorari denied, 299 U. S. 573; *Gans S. S. Line* v. *Bowers*, 82 F. (2d), 181, 183 (C. C. A. 2d), certiorari denied, 298 U. S. 676. Cf. *Parks & Woolson Mach. Co.* v. *United States*, 58 F. (2d) 868 (C. Cls.), certiorari denied, 287 U. S. 634; *First Nat. Bank of Beaver Falls* v. *United States*, 8 F. Supp. 484, 487–488 (C. Cls.), certiorari denied, 294 U. S. 717; *American Steam Conveyor Corporation* v. *United States*, 10 F. Supp. 571 (C. Cls.), certiorari denied, 296 U. S. 599. Cf. also *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 424. The question was left open by this Court in *Lowe Bros. Co.* v. *United States, supra.* In the present case the District Court stated (R. 107) that it was difficult to perceive any substantial distinction between an application of an overpayment to a barred deficiency and the application of an overpayment to a deficiency which did not in fact exist. The Circuit Court of Appeals did not discuss the point.

The confusion which existed as to the effect of credits against barred deficiences has been added to by the decision below, which involves both a barred deficiency and non-barred but allegedly erroneous deficiencies. A review by this Court of

the case would aid substantially in dispelling the confusion and furthering the orderly disposition of future cases.

3. The decision below is also in conflict with the holding in *United States* v. *Botany Worsted Mills*, decided by the Circuit Court of Appeals for the Third Circuit on September 2, 1938, not yet reported but found in 1938 C. C. H., Vol. 4, ¶ 9492, that the credit there involved of an overpayment of tax for 1918 against a deficiency for 1917 "must be regarded as a valid final closing of the accounts between the Government and the taxpayer so far as the overpayment of 1918 tax was concerned." That was a suit to recover interest on an overpayment of taxes for the year 1918 which had been credited against an assessment of taxes for the year 1917. The assessment for 1917 was later determined to be erroneous, and the amount collected by the credit was refunded, with interest from the date of the credit. The suit sought additional interest from the date of the original payment for 1918 to the date of credit. The Circuit Court of Appeals denied recovery on the ground, among others, that the legal effect of the credit was a payment by the Government to the taxpayer of the 1918 tax refundable to it and a simultaneous payment by the taxpayer to the Government of the same amount on account of its then outstanding tax assessment for 1917, closing out completely the year 1918.

CONCLUSION

The decision of the court below is erroneous. There is a conflict of decisions among Circuits. The question presented is important and the law with regard thereto is in confusion. Wherefore it is respectfully submitted that this petition should be granted.

ROBERT H. JACKSON,
Solicitor General.

OCTOBER 1938.

APPENDIX

STATUTES INVOLVED

Revised Statutes:

SEC. 3226 (as amended by Section 1103 (a) of the Revenue Act of 1932): No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. (U. S. C., Title 26, Sec. 1672.)

SEC. 3228 (as amended by Section 1106 (a) of the Revenue Act of 1932): (a) All claims for the refunding or crediting of any inter-

nal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund. * * * (U. S. C., Title 26, Sec. 1433.)

Judicial Code, as amended:

SEC. 24. The district courts shall have original jurisdiction as follows:

* * * * *

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding $10,000 founded upon the Constitution of the United States or any law of Congress, * * *; and of any suit or proceeding commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws even if the claim exceeds $10,000, if the collector of internal revenue

by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced. * * * All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury. (U. S. C., Title 28, Sec. 41.)

Act of March 3, 1875, c. 149, 18 Stat. 481, as amended by Title II, Sec. 13, Act of March 3, 1933, c. 212, 47 Stat. 1489:

That when any final judgment recovered against the United States duly allowed by legal authority shall be presented to the Comptroller General of the United States for payment, and the plaintiff therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Comptroller General of the United States to withhold payment of an amount of such judgment equal to the debt thus due to the United States; and if such plaintiff assents to such set-off, and discharges his judgment or an amount thereof equal to said debt, the Comptroller General of the United States shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff denies his indebtedness to the United States, or refuses to consent to the set-off, then the Comptroller General of the United States shall withhold payment of such further amount of such judgment as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Comptroller General of the United States to cause legal proceedings to be immediately commenced to enforce the same, and to cause the same to be prosecuted

to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Comptroller General of the United States with 6 per centum interest thereon for the time it has been withheld from the plaintiff. (U. S. C., Title 31, Sec. 227.)

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 606. CLOSING AGREEMENTS.

(a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance there-

with, shall not be annulled, modified, set aside, or disregarded.

* * * * *

(U. S. C., Title 26, Sec. 1660.)

SEC. 607. EFFECT OF EXPIRATION OF PERIOD OF LIMITATION AGAINST UNITED STATES.

Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this Act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (U. S. C., Title 26, Sec. 1670.)

SEC. 609. ERRONEOUS CREDITS.

(a) *Credit against barred deficiency.*—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607. (U. S. C., Title 26, Sec. 1675.)

(b) *Credit of barred overpayment.*—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608. (U. S. C., Title 26, Sec. 1675.)

(c) *Application of section.*—The provisions of this section shall apply to any credit made before or after the enactment of this Act.

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 321. OVERPAYMENT OF INSTALLMENT.

If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against

the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in Section 322.

SEC. 322. REFUNDS AND CREDITS.

(a) *Authorization.*—Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) *Limitation on allowance.*—

(1) *Period of limitation.*—No such credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) *Limit on amount of credit or refund.*—The amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

(c) *Effect of petition to board.*—If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272 (a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) *Overpayment found by board.*—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax paid more than two years before the filing of the claim or the filing of the petition, whichever is earlier.

(e) *Tax withheld at source.*—For refund or credit in case of excessive withholding at the source, see section 143 (f).

U. S. GOVERNMENT PRINTING OFFICE: 1939